

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Norfolk Southern Railway Company; Bement Township and Cerro Gordo Township, in Piatt County, Illinois; and the State of Illinois, Department of Transportation.

T04-0030

Stipulated Agreement regarding improving public safety at the 750E/TR60 highway-rail grade crossing of the Norfolk Southern Railway in Bement Township, and the 400E/TR28, 300E/TR20, and 200E/TR14 highway-rail grade crossings of the Company's track in Cerro Gordo Township, all located in Piatt County, Illinois, designated as crossings AAR/DOT 479 156A, milepost 356.67-WA, AAR/DOT 479 160P, milepost 360.27-WA, AAR/DOT 479 162D, milepost 361.34-WA, and AAR/DOT 479 164S, milepost 362.34-WA, respectively.

ORDER

By the Commission:

On January 5, 2004, January 12, 2004, February 2, 2004, February 27, and March 12, 2004, the Staff of the Illinois Commerce Commission, Bement Township, Cerro Gordo Township, the Illinois Department of Transportation, and the Norfolk Southern Railway Company, respectively executed a Stipulated Agreement No. 1062 according to the provisions of section 18c-7401 of the Illinois Commercial Transportation Law. Stipulated Agreement 1062, which is attached hereto, provides for safety improvements at the 750E/TR60 highway-rail grade crossing of the Norfolk Southern Railway in Bement Township, and the 400E/TR28, 300E/TR20, and 200E/TR14 highway-rail grade crossings of the Company's track in Cerro Gordo Township, all located in Piatt County, Illinois, designated as crossings AAR/DOT 479 156A, milepost 356.67-WA, AAR/DOT 479 160P, milepost 360.27-WA, AAR/DOT 479 162D, milepost 361.34-WA, and AAR/DOT 479 164S, milepost 362.34-WA, respectively.

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The physical characteristics of the subject highways - railroad grade crossings, rail and highway volumes and speeds are indicated on the respective Exhibit A's, of the Stipulated Agreement, appended hereto;

- (3) The Parties agree that in the interest of public safety the improvements as set forth in Section 2 of the Stipulated Agreement, appended hereto, should be performed;
- (4) The cost for the proposed improvements should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- (5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund ("Fund") of the Motor Fuel Tax Law, Bement Township and Cerro Gordo Township, in Piatt County, Illinois, and the Norfolk and Southern Railway Company, be directed to bear their respective portions of the actual cost of the proposed improvements as set forth in Section 6 of the Stipulated Agreement, appended hereto;
- (6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.
- (7) Public Act 93-0604 (effective November 21, 2003), which amends 18c-7401 (Safety Requirements for Track, Facilities, and Equipment) of the Illinois Commercial Transportation Law, requires installation of temporary STOP signs whenever the Commission authorizes the installation of automatic flashing light signals or automatic flashing light signals and gates at public highway-rail grade crossings. The temporary STOP signs shall remain in place until the luminous flashing signal or crossing gate devices have been installed. The rail carrier is responsible for the cost of the installation and subsequent maintenance of any required temporary STOP signs.

IT IS THEREFORE ORDERED that the terms of Stipulated Agreement 1062, attached hereto, executed by the Staff of the Illinois Commerce Commission, Bement Township, Cerro Gordo Township, the Illinois Department of Transportation, and the Norfolk Southern Railway Company on January 5, 2004, January 12, 2004, February 2, 2004, February 27, and March 12, 2004, respectively, be, and they are hereby accepted and required to be met by the aforesaid parties.

IT IS FURTHER ORDERED that Bement Township, Cerro Gordo Township, and the Norfolk and Southern Railway Company are hereby, required and directed to proceed immediately in performing the work as set forth in Section 2 of Stipulated Agreement 1062, attached hereto, and shall complete the work within eighteen (18) months from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvements herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 6 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall, within 30 days from the date of this Order, install temporary STOP signs at the 750E/TR60, 400E/TR28, 300E/TR20, and 200E/TR14 highway-grade grade crossings. The temporary STOP signs shall remain in place until the automatic warning devices authorized for installation by this Order are installed and operational. Norfolk Southern Railway Company shall be responsible for the cost of the installation and subsequent maintenance of the required temporary STOP signs.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall furnish a written statement with the Director of Processing and Information, of the Commission's Transportation Bureau, indicating that the temporary STOP signs have been installed at the above named highway-grade grade crossings.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file Form 3 of 92 Illinois Administrative Code 1535 with the Commission showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that all bills for expenditures authorized for reimbursement from the Grade Crossing Protection Fund for work outlined in Section 2 of Stipulated Agreement 1062, attached hereto, shall be submitted to the Illinois Department of Transportation, Fiscal Control Unit of the Central Bureau of Local Roads and Streets, Room 205, 2300 South Dirksen Parkway, Springfield, Illinois 62674. A copy of all bills shall be submitted to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures from each party shall be clearly marked "Final Bill".

IT IS FURTHER ORDERED that authorization for reimbursement from the Grade Crossing Protection Fund shall expire, and the Department shall de-obligate all residual obligations from the Grade Crossing Protection Fund, twelve (12) months after the

completion date specified in this Order.

IT IS FURTHER ORDERED that Bement Township and Cerro Gordo Township shall, within ninety (90) days from the date of this Order, submit to the Director of Processing and Information, of the Commission's Transportation Division, the name, title, mailing address, phone number, facsimile number and electronic mail address of Township employees responsible for management of this project.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company shall file a written report with the Director of Processing and Information, of the Commission's Transportation Division, within fifteen (15) days of the conclusion of each calendar quarter, stating the status of the billing for Grade Crossing Protection Fund reimbursement for their portion of the project and the percentage of completion of their portion of the project; if any portion of the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that Norfolk Southern Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a National Inventory Update Report Form as a notice of said completion.

IT IS FURTHER ORDERED that the Norfolk Southern Railway Company be, and it is hereby required and directed to submit a written notice, to the Director of Processing, Transportation Division of the Commission, of the date the work herein required of it has been completed. Said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that Bement Township and Cerro Gordo Township be, and they are hereby required and directed to submit a written notice, to the Director of Processing, Transportation Division of the Commission, of the date the work herein required of them has been completed. Said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that, any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that, any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The

Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 21st day of April, 2004.

Edward C. Husley 2

Chairman

JUDGE
SECTION CHIEF <i>MES</i>
<i>[Signature]</i> ORDERS SUPERVISOR